

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



TRANSCRIPT OF RECORD.

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Court of Appeals, District of Columbia

OCTOBER TERM, 1900.

No 1005.

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JOSEPH W. STERN AND EDWARD B. MARKS,  
APPELLANTS,

*vs.*

GEORGE ROSEY.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED JUNE 27, 1900.

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## INDEX.

Original. Print.

Caption.....	<i>a</i>	1
Bill .....	1	1
Exhibit C—(Omitted in printing).....	7	—
D—(Omitted in printing).....	8	—
Demurrer.....	9	5
Amended bill, with order of court allowing same to be filed, and demurrer to bill to stand as demurrer to bill as amended.....	10	6
Decree; appeal and penalty of appeal bond fixed.. ..	12	7
Order for preparation of transcript.....	13	7
Memorandum: Appeal bond filed.....	13	7
Clerk's certificate.....	14	8
Stipulation of counsel as to printing.....	15	8

In the Court of Appeals of the District of Columbia.

JOSEPH W. STERN and EDWARD B. MARKS, Appellants, }  
*vs.* } No. 1005.  
 GEORGE ROSEY.

*a* Supreme Court of the District of Columbia.

JOSEPH W. STERN ET AL. }  
*vs.* } No. 21365. In Equity.  
 GEORGE ROSEY. }

UNITED STATES OF AMERICA, } ss :  
*District of Columbia.*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Apr. 23, 1900.

In the Supreme Court of the District of Columbia.

JOSEPH W. STERN and EDWARD B. MARKS, }  
 Complainants, } In Equity. No. 21365.  
*vs.* }  
 GEORGE ROSEY, Defendant. }

To the honorable the justices of the supreme court of the District of Columbia, holding a special term in equity :

Your complainants, Joseph W. Stern and Edward B. Marks,  
respectfully represent:

1. That they are citizens of the United States and residents of the city of New York, and copartners trading under the name and style of Joseph W. Stern and Company.

2. That the defendant, George Rosey, is a citizen of the United States and a resident of the city of New York, but temporarily residing in the District of Columbia, and is sued as hereinafter mentioned.

3. That your complainants, as copartners, are engaged in the business of publishers of music, and as copartners are the sole owners of two certain musical compositions and vocal selections

entitled as follows: "Take Back Your Gold" and "Whisper Your Mother's Name;" that being sole owners and proprietors of said musical compositions and songs, on or about the 8th day of August, 1896, and on the 20th day of February, 1897, they complied with the requirements of sections 4948 to 4970, both inclusive, of the Revised Statutes of the United States, as amended, being what is known as the copyright law, to wit, filed two printed copies of each of the said musical compositions and songs at the office of the Librarian of Congress at Washington, in the District of Columbia. The said musical compositions and songs were recorded by the Librarian of Congress in a book kept by him for that purpose. Certified copies of said records or copyrights are hereto attached, marked Complainants' Exhibits A and B, and made a part of this bill the same as if the contents thereof had been fully set forth.

4. That your complainants have been publishing and selling the said musical compositions and songs entitled "Take Back Your Gold" and "Whisper Your Mother's Name," and upon each and every copy thereof published and sold by your complainants there appeared upon the title-page or front sheet of the same the following words, viz: "Copyright 1896 by Jos. W. Stern & Co. All rights reserved," and also "Copyright 1897 by Jos. W. Stern & Co. All rights reserved," as provided by section 4962 of the Revised Statutes of the United States. Copies of said songs are hereto attached, marked Complainants' Exhibits C & D; that your complainants are the only ones entitled to publish and sell the said musical compositions and songs and are sole owners of all rights in any way connected therewith.

5. That the defendant, George Rosey, is engaged in the business and trading under the name and style of "The Universal Record Company," and is the manufacturer and maker of wax cylinders for a mechanical instrument or device known as the "phonograph;" that the said defendant, having knowledge of your complainant's ownership of the aforesaid two musical compositions and songs, and in violation of your complainant's said rights, prepared and manufactured certain wax cylinders which were placed in the mechanical device known as the "phonograph," which caused the said cylinders to be revolved; that while in the course of being revolved under a certain metal horn or megaphone, in which words and music of the said copyrighted musical compositions and songs were sung by the human voice and the sound which was transmitted through the said metal horn or megaphone to what is known as a sapphire recording point, having sharp, even surface, and while the said words and musical compositions and songs were being sung into the said metal horn or megaphone, the said cylinder was revolved and the words and music of the said copyrighted musical compositions and songs were engraved on said wax cylinders by means of said sapphire recording point for the purpose of reproducing and publishing the said copyrighted musical compositions and songs, and in violation of the rights of your

complainants the defendant has been selling large numbers of the aforesaid wax cylinders with the engraved records of the words and music of the said copyrighted musical compositions and songs; and your complainants further state that they are informed, and being informed verily believe the same to be true, that the defendant is now producing and selling large quantities of the aforesaid wax cylinders with the words and music of the said two musical compositions and songs engraved upon the same, notwithstanding the demand made upon him by your complainants that he cease from so doing.

4        6. That said defendant has produced large numbers of said copies, as set out in foregoing paragraphs, and has not accounted to your complainants, and your complainants are entitled to an accounting for the profits derived from said publication (said profits your complainants are informed and believe amount to the sum of ten thousand dollars), and to an injunction restraining defendant from using any more of said copies, complainants hereby waiving all rights they may have to the penalties and forfeitures which they may be entitled to under the statutes of the United States as in such cases made and provided.

Wherefore, the premises considered, your complainants pray :

1. That the United States writ of subpoena issue out of this honorable court, directed to the defendant, George Rosey, commanding him on a day therein named to enter his appearance and answer the exigencies of this bill.

2. That the defendant, George Rosey, discover and make known to your complainants the number of wax cylinders made by him upon which he has by means of the mechanical device known as the phonograph engraved and recorded the copyrighted musical compositions and songs entitled "Take Back Your Gold," "Whisper Your Mother's Name," and that he further discover and make — the names of all persons to whom he has sold said wax cylinders with the record of said copyrighted musical compositions and songs engraved and recorded thereon; that the defendant, George Rosey, be compelled to account to the complainants for the number of cylinders so engraved and sold by him.

5        4. That a preliminary injunction (to be made final at the hearing in the cause) be issued enjoining the defendant from making or selling said wax cylinders upon which he has by means of the mechanical device known as the phonograph engraved and recorded the copyrighted musical compositions and songs entitled "Take Back Your Gold" and "Whisper Your Mother's Name."

5. That your complainants may have such other and further relief as from the premises may appear to the court to be equitable and just.

JOS. W. STERN.  
EDWARD B. MARKS.

CITY OF NEW YORK, }  
 County of New York, } ss :

Joseph W. Stern and Edward B. Marks, being first duly sworn, depose and say that they have read over the foregoing bill by them subscribed and know the contents thereof; that the matters and things therein stated as of their own personal knowledge are true, and those stated upon information and belief they believe to be true.

JOS. W. STERN.

EDWARD B. MARKS.

Subscribed and sworn to before me this 9th day of March, 1900.

[SEAL.]

MAX B. MARKS,

*Notary Public, N. Y. Co.*

6-8

Filed Apr. 23, 1900.

LIBRARY OF CONGRESS,  
 COPYRIGHT DEPARTMENT, WASHINGTON, D. C.

I hereby certify that two copies of the musical composition entitled *Whisper Your Mother's Name*, words by Harry Braisted, music by Stanley Carter, were deposited in this office by Jos. W. Stern & Co., of New York, during the week of August 3 to August 8, 1896, and were credited on entry No. 32214 of 1896 to complete copyright.

In witness whereof the seal of the Librarian of Congress has been hereto affixed this fifth day of March, 1900.

HERBERT PUTNAM,

*Librarian of Congress,*

By THOWALD SOLBERY,

*Register of Copyrights.*

[SEAL.]

(Stamp.)

Filed Apr. 23, 1900.

LIBRARY OF CONGRESS,  
 COPYRIGHT DEPARTMENT, WASHINGTON, D. C.

I hereby certify that two copies of the musical composition entitled *Take Back Your Gold*, written & composed by Monroe H. Rosenfeld, were deposited in this office by Jos. W. Stern & Co., of New York, on the twentieth day of February, 1897, and were credited on entry No. 4524 of 1897 to complete copyright.

In witness whereof the seal of the Librarian of Congress has been hereto affixed this fifth day of March, 1900.

HERBERT PUTNAM,

*Librarian of Congress,*

By THOWALD SOLBERY,

*Register of Copyrights.*

[SEAL.]

(Stamp.)



9

*Demurrer to Bill of Complaint.*

Filed Apr. 23, 1900.

In the Supreme Court of the District of Columbia.

JOSEPH W. STERN and EDWARD B. MARKS,	} In Equity. No. 21365.
Complainants,	
vs.	
GEORGE ROSEY, Defendant.	

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, doth demur thereto, and for causes of demurrer shows that the said complainants have not in and by their said bill stated such a case as doth or ought to entitle them to any such relief as is thereby sought and prayed for in said bill against him.

And defendant further says that said bill doth not state any infringement of the said copyright therein stated or any publication of same by the defendant within the meaning of the copyright laws of the United States.

GEORGE ROSEY.

We, the solicitors for the defendant, certify that in our opinion the above demurrer is well founded in law.

D. W. BAKER,  
H. M. EARLE,  
*Solicitors for Defendant.*

STATE OF NEW YORK, }  
County of New York, } ss :

10 George Rosey, defendant in the above-entitled cause, deposes and says that the above demurrer is not interposed for delay.

GEORGE ROSEY.

Sworn and subscribed to before me this 19th day of April, A. D. 1900.

[SEAL.]

GEORGE N. BOEHM,  
*Notary Public, N. Y. Co.*

*Amended Bill.*

Filed May 22, 1900.

In the Supreme Court of the District of Columbia.

JOSEPH W. STERN ET AL., Complainants,	}	Equity. No. 21365.
vs.		
GEORGE ROSEY, Defendant.		

To the honorable the justices of the supreme court of the District of Columbia, holding a special term in equity :

The complainants, Joseph W. Stern and Edward B. Marks, amend the bill heretofore filed by them in this cause by inserting an additional paragraph, numbered 5½.

5½. That the said defendant, George Rosey, in manufacturing said records would, after having secured what is known as a master record, to wit, a wax cylinder upon which the aforesaid songs  
 11 had been perfectly engraved in manner aforesaid, which perfect or master record would be placed in the device known as the double phonograph and a wax cylinder upon which nothing had been recorded placed directly under the engraved or master record, and by revolving the master record and unengraved cylinder a double sapphire point would reproduce the engraving on the master record upon the wax cylinder revolving below same, and in this manner said defendant has reproduced as many as 5,000 records of your complainants' aforesaid copyrighted musical compositions and songs from one master record, and has sold and is now engaged in vending and selling large quantities of the aforesaid wax cylinders, with the engraving which reproduces the words and music of the aforesaid copyrighted compositions and songs, notwithstanding the demands made upon him by your complainants that he cease from so doing.

DAVID M. NEUBERGER,  
 JOHN C. GITTINGS,

*Sol'rs for Compl'ts.*

It is ordered that complainants be allowed to amend their bill as prayed, and that the bill stand as amended this 22nd day of May, A. D. 1900, and the demurrer hereto filed to stand as demurrer to amended bill.

JOB BARNARD, *Justice.*

12

*Decree.*

Filed May 22, 1900.

In the Supreme Court of the District of Columbia.

JOSEPH W. STERN ET AL., Complainants, }  
*vs.* } Equity. No. 21365.  
 GEORGE ROSEY, Defendant. }

This cause coming on to be heard on the bill and the amended bill and demurrer thereto, after having been fully argued by the solicitors for the respective parties and duly considered by the court, it is, this 22nd day of May, A. D. 1900, by the court adjudged, ordered, and decreed that the demurrer filed by the defendant to the said bill and amended bill of complaint be, and is hereby, sustained; and it is further ordered, adjudged, and decreed that the said bill and amended bill of complaint be, and the same are hereby, dismissed; and it is further ordered, adjudged, and decreed that the complainants pay the costs of the suit.

JOB BARNARD, *Justice.*

From the above decree the complainants in open court pray that they may be allowed an appeal to the Court of Appeals of the District of Columbia, which appeal is by the court allowed upon the plaintiff giving bond in the sum of one hundred dollars.

JOB BARNARD, *Justice.*

13

*Order for Preparation of Record.*

Filed Jun- 8, 1900.

In the Supreme Court of the District of Columbia.

GEORGE W. STERN ET AL. }  
 vs. } In Equity. No. 21365.  
 GEORGE ROSEY. }

To John R. Young, Esq., clerk :

Please make up record for the Court of Appeals in the above-entitled cause and insert therein the following pleadings:

Bill of complaint and amendment thereto.

Demurrer.

## Decree.

JOHN C. GITTINGS,  
*Solicitor for Complainants.*

*Memorandum.*

June 8, 1900.—Appeal bond filed.

## 14 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }  
*District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 13, inclusive, to be a true and correct transcript of the record, as per order of counsel for the appellants herein filed and made part of this transcript, in cause No. 21365, in equity, wherein Joseph W. Stern *et al.* are complainants and George Rosey is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe  
 Seal Supreme Court my name and affix the seal of said court, at  
 of the District of the city of Washington, in said District, this  
 Columbia. 20th day of June, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

## 15 Court of Appeals of the District of Columbia.

JOSEPH W. STERN and EDWARD B. MARKS, }  
 Appellants, } No. 1005, October  
*vs.* } Term, 1900.  
 GEORGE ROSEY. }

It is hereby stipulated and agreed by and between counsel for the respective parties that Exhibits C and D (pages 7 and 8 of transcript) may be omitted by the clerk in printing the record, and that copies of same may be handed to the court at the hearing.

JOHN C. GITTINGS,  
*Att'y for Appellants.*  
 D. W. BAKER,  
*Attorney for Appellee.*

(Endorsed :) No. 1005. Court of Appeals of the District of Columbia. Stipulation as to printing record. Court of Appeals, District of Columbia. Filed Jul- 12, 1900. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1005. Joseph W. Stern and Edward B. Marks, appellants, *vs.* George Rosey. Court of Appeals, District of Columbia. Filed Jun- 27, 1900. Robert Willett, clerk.

